

ORDINANCE NO. 03-248

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS AMENDING THE LOS ALTOS MUNICIPAL CODE BY RESCINDING EXISTING CHAPTER 11.10 IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 11.10 PERTAINING TO NUISANCE ABATEMENT; AMENDING SECTION 14.66.310 TO BE CONSISTENT WITH NEW CHAPTER 11.10 AND RESCINDING CHAPTER 6.20 (NUISANCE ABATEMENT) AND CHAPTER 7.16 (GRAFFITI)

The City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: Title 11 of the Los Altos Municipal Code entitled "Miscellaneous Property Regulations" is hereby amended by rescinding in its entirety the existing Chapter 11.10 consisting of Sections 11.10.010 through 11.10.280.

SECTION 2. AMENDMENT OF CODE: Title 11 of the Los Altos Municipal Code entitled "Miscellaneous Property Regulations" is hereby amended by adding thereto a new Chapter 11.10 consisting of sections 11.10.010 through 11.10.250 to read as follows:

"Chapter 11.10. Nuisance Abatement.

" 11.10.010 Purpose and Findings.

This chapter provides a method of addressing the problem of adequate real property maintenance in Los Altos. It addresses single-family residential; multi-family residential; and commercial properties.

A. Public nuisances may be addressed by enforcement of the provisions of this Chapter by the City manager or authorized representative. Uncorrected violations may be enforced by referral to the City Attorney for prosecution as a misdemeanor or by civil proceedings to abate the public nuisance. City officials shall use discretion in acting upon repeated and trivial complaints about public nuisances.

B. Private nuisances may be addressed by referral to a mediation service. The City does not have standing to abate a private nuisance. Remedies in the law are available to those affected by a private nuisance.

C. The City Council finds as follows:

1. The City wishes to encourage the maintenance of well-kept residential and commercial properties.

2. The maintenance of real property as a public nuisance may be injurious to the public health and safety.

3. Public Nuisance means the maintenance of any real property in a condition as described in this Chapter.

4. Private nuisances are not subject to enforcement of the provisions of this Chapter. Upon discovery of a private nuisance by observation, or by notification, the problem may be referred to any mediator or mediation service for resolution.

11.10.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless from the context a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

A. "Abatement costs and administrative expenses" means and include, but are not limited to, the actual expenses and costs of the city in preparing notices, specifications and contracts; in conducting inspections; for legal fees; and for other related costs incurred in enforcing the provisions of this chapter, as well as reasonable costs to abate a nuisance.

B. "Blighted property" means any property on which there exists any one or more of the conditions or activities set out below:

1. Buildings, which are abandoned, partially destroyed, or left in an unreasonable state of partial construction. "An unreasonable state of partial construction" is defined as any unfinished building or structure where the owner has been given written notice and where the building permit has expired.

2. Buildings in which the condition of the paint, or the condition of the buildings, has become so deteriorated as to permit decay, excessive dry rot, or termite infestation.

3. Buildings with windows containing broken glass or no glass at all where the window is of a type which normally contains glass thereby constituting a hazardous condition and inviting trespassers and malicious mischief.

4. Building exteriors, walls, fences, driveways, walkways, or alleys which are maintained in such condition as to become so unsafe, defective or unsightly that the same is materially detrimental to nearby properties and improvements.

5. Improper existence and maintenance of signs relating to uses no longer conducted or products no longer sold on the property.

6. Overgrown vegetation likely to harbor rats, vermin and other nuisances, growing into the public right-of-way, or obstructing the necessary view of drivers on public streets or private driveways.

7. All weeds as defined below located upon or growing on the right-of-way of any public street or street offered for dedication to the public, and any sidewalk, curb, gutter, private road or right-of-way furnishing access to any building or structure or alley within the City.

8. All weeds as defined below dangerous to neighboring properties or the health or welfare of residents in the vicinity.

9. Unenclosed storage of rubbish, materials or other items (not including motor vehicles) stored as defined below in a manner as to be readily visible to the general public and/or which is detrimental to the general public welfare. Nothing in this section shall be construed

as prohibiting the orderly outdoor storage of business related materials and inventory where permitted by applicable zoning designation and/or conditional use permit.

10. Attractive nuisances as defined below which are readily visible to the general public.

11. The disposal of oil, gasoline, other petroleum products, noxious chemicals, pesticides or any gaseous, liquid or solid wastes in such manner as to constitute a health hazard, or that is materially detrimental to nearby properties and improvements.

12. Construction equipment or machinery of any type or description parked or stored on the owner's property when it is readily visible to the general public, except while excavation, construction or demolition operations covered by an active building permit are in progress on the subject property or an adjoining property;

13. Graffiti as defined below which remain on the exterior of any real or personal property and is readily visible to the general public for a period of more than ten days after written notice to remove same has been given by the city manager. Real and personal property includes, but shall not be limited to; buildings or other structures, such as walls; fences; signs; retaining walls; driveways; walkways; sidewalks; curbs; street lampposts; hydrants; trees; electric, light, power, telephone or telegraph poles; drinking fountains; and garbage receptacles.

C. "Compost" means the product resulting from controlled biological decomposition of organic waste that is source separated from the municipal solid waste stream and which does not produce objectionable odors, insect problems or fire hazards and meets all other applicable municipal and state codes relating to compost.

D. "Graffiti" means any unauthorized inscription, writing, lettering, word, drawing, figure, marking, painting or design that is marked, written, etched, scratched, drawn or painted on any real or personal property

E. "Landowner" means the person to whom land is assessed, as shown on the last equalized assessment roll of the county.

F. "Nuisance" means anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the use in the customary manner of any public park, street or highway. An "attractive nuisance" means any condition or instrumentality that is unsafe and unprotected and thereby dangerous to children by reason of their inability to appreciate the peril therein, and that may reasonably be expected to attract children to the premises and risk injury by playing with, in or on it. Attractive nuisance also means property, which is in an unsecured state so as to potentially constitute an attraction to children, a harbor for criminals or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful act.

G. "Private nuisance" means all nuisances not included in the definition of a public nuisance.

H. "Property" means any lot or parcel of land. For the purposes of this definition, "lot or parcel of land" means and includes any parkway abutting such lot or parcel of land.

I. "Public nuisance" means a nuisance, which affects at the same time an entire community, neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Blighted property as defined above is a public nuisance.

J. "Rubbish" means combustible and noncombustible waste materials, paper, rags, cartons, boxes, wood, plastic and particularly plastic sheeting, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, scrap metal, mineral matter, glass, crockery, machine parts and shopping carts. The term shall also include lumber, concrete, asphalt, bottles, tires, litter, piles of dirt, sand or gravel, abandoned, broken, discarded or unused furniture, stoves, sinks, toilets, cabinets, refrigerators, freezers, discarded or inoperable equipment, and machinery and building supplies and building materials (except while excavation, construction or demolition is in progress at the site under a current city-issued permit). Rubbish shall not include compost.

K. "Storage" means the physical presence on property for a period exceeding three (3) days in any one week period.

L. "Weeds" mean and include, without limitation, any of the following:

1. Weeds which bear seeds of a downy or wingy nature;
2. Sagebrush, chaparral and any other brush or weeds which attain such growth as to become, when dry, a fire or safety menace;
3. Weeds which are otherwise noxious or dangerous;
4. Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health;
5. Dry grass, stubble, brush litter or other flammable material which endangers the public safety by creating a fire hazard.

11.10.030 Maintaining Blighted Property or Nuisance Prohibited

It is declared a public nuisance for any landowner or person leasing, occupying, directly controlling or having possession of any property in this city to maintain any condition described in Section 11.10.020 B subsections 1-13.

11.10.040 Administration and Enforcement.

A. The city manager shall be the primary city official responsible for the administration and enforcement of this chapter. The city manager may appoint any other city employee as the manager's designee and delegate all or a portion of the administration and enforcement responsibilities to that person. The city manager or designee shall provide property owners in violation of this Chapter with notices as described below. Thereafter, any legal remedies to abate public nuisances shall be pursued by the city manager or designee and the city attorney unless all applicable code violations are corrected.

- B. For private nuisances, the city will attempt to contact the affected or involved individuals and facilitate a resolution of the issues. In addition to other conflict resolution techniques, the city may utilize a mediation service to help resolve the matter.
- C. In any action, administrative proceeding or special proceeding to abate a public nuisance, the judge or other presiding officer shall award reasonable attorneys' fees to the prevailing party as authorized by Section 38773.5 of the California Government Code, in addition to such other costs and expenses as are allowable by law.
- D. In any case in which a criminal prosecution for violation of Penal Code Sections 594 and 640.6, or any other law which authorizes the court to sentence the criminal defendant to remove graffiti that he or she unlawfully placed on property is pending or is to be instituted against the person(s) who placed graffiti upon property in the city, the city manager may stay, at the manager's sole option and discretion, the nuisance abatement procedure set forth in this chapter until the criminal prosecution has been completed and the judgment of the court has been rendered and has become final. If the defendant is found guilty, and the court sentences the criminal defendant to clean up the graffiti, or to pay for someone else to do so, the criminal defendant shall be responsible for the removal of the graffiti pursuant to this chapter. If the criminal defendant does not remove the graffiti, or pay for someone else to do so, within ten (10) days of the time designated for removal of the graffiti by the court, or in the event of an unsuccessful appeal by the defendant, within ten (10) days of the date on which defendant would be legally required to comply with the court's order, the city may require the property owner to remove the graffiti pursuant to this chapter. Nothing in this section shall prevent the property owner from taking legal action to recover the costs of removing the graffiti from the criminal defendant or the city and/or the property owner from taking other legal action against the criminal defendant.

11.10.050 Right to enter property to inspect or abate.

When required by law, the city manager or designee shall first obtain consent of the responsible party or an appropriate court order to enter upon private property to inspect and abate a public nuisance pursuant to the provisions of this chapter upon completion of the noticing provisions outlined in this chapter. No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city whenever such person is engaged in the work of abatement, pursuant to the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work, as authorized or directed pursuant to this chapter.

11.10.060 Abatement of Unlawful Conditions - Notice.

Whenever the city manager or designee has inspected and finds that conditions constituting a public nuisance exist thereon, the city manager or designee may use the following procedures for the abatement of such unlawful condition:

- A. The city manager or designee shall issue a notice and abatement order, and serve and /or mail a copy of such notice and order to the landowner and the person, if other than the landowner, occupying or otherwise in real or apparent charge and control of the property. The notice and order shall contain:
1. The street address and a legal description sufficient for identification of the property on which the condition exists;
 2. A statement that the city manager or designee has determined that a public nuisance is being maintained on the property, with a brief description of the conditions that render the property a public nuisance;
 3. An order to secure all appropriate permits and to physically commence, within ten (10) days from the date of service of the notice and order, and to complete within thirty (30) days from such date, the abatement of any public nuisance;
 4. A statement advising that the disposal of material involved in public nuisances shall be carried forth in a legal manner;
 5. A statement advising that if the required work is not commenced within the time specified, the city manager or designee will proceed to cause the work to be done, and bill the persons named in the notice for the abatement costs and administrative expenses and/or levy the costs against the property by recorded liens;
 6. A statement advising that any person having any interest or record title in the property may appeal the notice and order or any action of the city manager or designee to city council within ten (10) days from the date of service of the notice and order;
- B. The notice and order and any amended notice and order, shall be served by the following method:
1. Personal service; or
 2. Certified mail, postage prepaid, return receipt requested to each person as required pursuant to the provisions of subsection A of this section at the address as it appears on the last equalized assessment roll of the county, and as known to the city manager or designee. The address of the owner shown on the assessment roll shall be conclusively deemed to be the proper address for the purpose of mailing such notice. Simultaneously, the same notice may be sent by first class (regular) mail. If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned;
 3. Service by certified or regular mail in the manner described above shall be effective on the date of mailing;

4. The failure of any person with an interest in the property to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this code. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Government Code Section 6062.
- C. Proof of service of the notice and order shall be documented at the time of service by a declaration under penalty of perjury executed by the person effecting service, declaring the time and manner in which service was made.
- D. After the city council has affirmed the notice and order on appeal or in the event no hearing has been requested, and the public nuisance has not been abated, the city manager or designee shall file in the office of the county recorder a certified copy of the notice of public nuisance and order of abatement as set forth in subsection A of this section. The city manager or designee shall file a certificate with the county recorder that the public nuisance has been abated, whenever the corrections ordered shall have been completed, so that there no longer exists a condition of public nuisance on the property described in the certificate; or the notice and order is rescinded by the city council on appeal, or whenever the city abates the public nuisance and the abatement costs and administrative expenses have been paid.

11.10.070 Abatement work--Extension of time.

Upon receipt of a written request from any person required to comply with an order, the city manager or designee may grant an extension of time that will not create or perpetuate a situation imminently dangerous to life or property. The city manager or designee shall have the authority to place reasonable conditions on any such extensions.

11.10.080 Abatement work--Appeal of notice.

Any person aggrieved by the action of the city manager or designee in issuing a notice and order pursuant to the provisions of this chapter may appeal to the city council within ten (10) days of the notice and order. If no appeal is filed within ten (10) days of service of the notice and order, the action of the city manager or designee shall be final.

11.10.090 Performance of abatement--City authority.

Abatement of the nuisance may, in the discretion of the city manager or designee, be either performed by the city or by a contractor retained by the city.

11.10.100 Dangerous nuisance--Immediate abatement--Notice and costs.

Whenever the city manager or designee determines that a public nuisance is so imminently dangerous to life, limb or property that such condition must be immediately corrected or isolated, the city may institute the following procedures:

- A. Notice. The city manager or designee shall attempt to make contact through a personal interview, or by telephone, with the landowner or the person, if any, occupying or otherwise in real or apparent charge and control thereof. In the event contact is made, the city manager or designee shall notify such person or persons of the danger involved and require that such condition be immediately removed or repaired so as to preclude harm to any person or property
- B. Abatement. In the event the city manager or designee is unable to make contact as above described, or if the appropriate persons, after notification by the city manager or designee, do not take action as specified by such official, within twenty-four (24) hours or such lesser time as circumstances may warrant in the discretion of the city manager, then the city manager or designee may, with the approval of the city manager, take all steps deemed necessary to remove or abate such dangerous condition, or conditions, with the use of city forces or a contractor retained pursuant to the provisions of this code.

11.10.110 Costs of abatement--Record keeping.

The city manager or designee shall keep an itemized account of the expenses and costs incurred by the city in the abatement of any public nuisance under this chapter. Upon completion of the abatement work, the city manager or designee shall prepare a report specifying the work done, the itemized costs of the work for each property, including direct and indirect costs, a description of the real property, and the names and addresses of the persons entitled to service pursuant to the provisions of this chapter. Any such report may include expenses and costs on any number of properties, whether or not contiguous to each other. Each person named in the notice shall be jointly and severally liable for such abatement costs and administrative expenses for their property, and the amount of such costs and expenses shall be a debt owed to the city.

11.10.120 Costs of abatement--Hearing--Protests.

- A. When any costs assessed pursuant to this chapter remain unpaid for a period of sixty (60) days or more after the date on which they were billed, the city manager or designee may forward the abatement costs and administrative expenses report described in this chapter to the city clerk.
- B. Hearing Notice. Upon receipt of the abatement costs and administrative expenses report, the clerk shall fix a time and place for hearing and passing upon the report. The clerk shall cause notice of the amount of the proposed assessment shown in this report to be given in the manner and to the persons specified in Section 11.10.060. Such notice shall contain a description of the property sufficient to enable the persons served to identify it, and shall specify the day, hour and place when the city council will hear and pass upon the report,

together with any objections or protests which may be raised by any landowner liable to be assessed for the costs of such abatement. Notice of the hearing shall be given no less than fifteen (15) days prior to the time fixed by the clerk for the hearing, and shall also be published once, at least fifteen (15) days prior to the date of the hearing, in a newspaper of general circulation in the city.

- C. Protests. Any interested person may file a written protest with the city clerk at any time prior to the time set for the hearing on the report of the city manager or designee. Each such protest shall contain a description of the property in which the person signing the protest is interested, and the ground of such protest. The city clerk shall endorse on every such protest the dates and time of filing, and shall present such protest to the city council at the time set for hearing. Any interested person may also register a protest at the time of the hearing.

11.10.130 Proposed assessment hearing.

Upon the day and hour fixed for the hearing the city council shall consider the report of the city manager or designee, together with any protests that have been filed with the city clerk. The city council may make such revision, correction or modification in the report as it may deem just, and when the city council is satisfied with the correctness of the assessment, the report, and proposed assessment, as submitted or as revised, corrected or modified, shall be confirmed. The decision of the city council on the report and the assessment and on all protests shall be final and conclusive. The city council may adjourn the hearing from time to time.

11.10.140 Confirmed assessment--Notice of lien.

- A. Notice of Lien. Immediately upon the confirmation of the assessment by the city council, the city manager or designee shall execute and file in the office of the county recorder a certificate in substantially the following form:

NOTICE OF LIEN

Pursuant to the authority vested in the city manager or designee by the provisions of the Los Altos Municipal Code, said city manager or designee, on or about the _____ day of _____, 20____, caused the abatement of a public nuisance on real property at _____ (Assessor's Parcel Number _____), and the city council for the City of Los Altos, on the _____ day of _____, 20____, assessed administrative expenses and abatement costs upon said real property and the same has not been paid nor any part thereof. The City of Los Altos hereby claims a lien on said real property for the net expense of the administrative expenses and abatement costs in the amount of \$ _____. This amount shall be a lien upon said real property until the sum has been paid in full and discharged of record.

Dated: This _____ day of _____, 20_____.

CITY MANAGER OF THE CITY OF LOS ALTOS

(ACKNOWLEDGEMENT)

- B. Recordation. Immediately upon the recording of the notice of lien, the assessment shall constitute a lien on the real property assessed. Such lien shall, for all purposes, be upon a parity with lien of state and local taxes.

11.10.150 Confirmed assessment--Collection.

- A. Assessment Book. The notice of lien, after recording, shall be delivered to the tax assessor of Santa Clara County, who shall enter the amount in the county assessment book opposite the description of the particular property, and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the auditor before the date fixed by law for the delivery of the assessment book to the county board of equalization.
- B. Collection. Thereafter, the amount set forth in the notice of lien shall be collected at the same time and in the same manner as ordinary city taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary city taxes. All laws applicable to the levy, collection and enforcement of city taxes are made applicable to such assessment. The amount set forth in the notice of lien shall be returned to the city fund designated for code enforcement activities.

11.10.160 Procedures of this chapter--Cumulative.

- A. Procedures used and actions taken for the abatement of public nuisances are not limited by this chapter. Procedures and actions under this chapter may be utilized in conjunction with, or in addition to, any other procedure applicable to the regulation of buildings, structures or property, including, but not limited to, injunctive or other judicial relief.
- B. All public nuisance conditions which are required to be abated pursuant to the provisions and permit requirements of this chapter shall be subject to all provisions of this code including, but not limited to, building construction, repair or demolition and to all housing, zoning, traffic and fire code provisions.
- C. Nothing in this chapter shall prevent the city council from ordering the city attorney to commence a civil or criminal proceeding to abate a public nuisance as an alternative to the proceeding set forth in this chapter.
- D. The provisions of this chapter shall not affect the rights of private parties to pursue any and all available legal remedies.

11.10.170 Limitation of filing judicial action.

An owner of other person who has an interest in the property aggrieved at any proceeding taken on appeal by the city council in affirming, reversing or modifying in whole or in part either the order finding and ordering the abatement of a public nuisance or the order determining the cost of abatement must bring a judicial action to contest such decision within ninety days after the date of such decision of the city council. Otherwise, all objections to such decision shall be deemed waived.

11.10.180 Violation--Penalty.

- A. The owner or other person having charge or control of property who maintains any public nuisance, defined in this chapter, or who violates any order of abatement served as provided in this chapter, is guilty of a misdemeanor.
- B. Any occupant or lessee in possession of any such property who fails to vacate the property or any building or structure thereon in accordance with an order given as provided in this chapter, is guilty of a misdemeanor.
- C. Any person who removes any notice or order posted as required in this chapter, for the purpose of interfering with the enforcement of the provisions of this chapter, is guilty of a misdemeanor.
- D. Any person who obstructs, impedes or interferes with the city manager or designee or with any person who owns or holds any estate or interest in a building which has been ordered by the court to be vacated, repaired, rehabilitated or demolished, or with any person to whom any such building has been lawfully sold pursuant to the provisions of this chapter when any of the aforementioned individuals are lawfully engaged in proceedings involving the abatement of a nuisance, is guilty of a misdemeanor.

SECTION 3. AMENDMENT OF CODE: Section 14.66.310 of the Los Altos Municipal Code entitled "Storage in yards" is hereby amended to read as follows:

"Section 14.66.310 Storage in yards.

"A. No portion of any required front yard shall be used for the storage of motor vehicles (except automobiles in fully operational condition), airplanes, boats, detachable camping apparatus, other miscellaneous mobile equipment, parts of any of the foregoing, or building materials (except building materials reasonably required for construction work on the premises pursuant to a valid and existing building permit issued by the City); provided, however, the property described in this subsection may be placed in the required front yard area for the purposes of loading, unloading, or other acts incidental to preparation for subsequent use for a period not to exceed three (3) days in any one week.

"B. The prohibitions relating to storage set forth in subsection (A) of this section shall apply to required side yards of corner lots except when a fence has been legally constructed, pursuant to City regulations, of sufficient

height and of a type which reasonably screens the stored property from public view and reasonably prevents it from becoming a nuisance by attraction to children.

"C. "Storage", as used in this section, shall mean the physical presence of the prescribed property, or any portion thereof, within the required front or side yard area for property within any zoned area, as the same is set forth and delineated in this chapter.

"D. "Week" is used in this section, shall mean the period from mid-night Sunday to midnight the following Sunday.

"E. "Day", as used in this section, shall mean the period of time from any midnight to the following midnight.

"F. A fraction of a day shall be deemed an entire day for the purposes of computing time pursuant to the provisions of this section."

SECTION 4. AMENDMENT OF CODE. Chapter 6.20 "Nuisance Abatement" of the Los Altos Municipal Code is hereby rescinded in its entirety.

SECTION 5. AMENDMENT OF CODE. Chapter 7.16 of Title 7 the Los Altos Municipal Code (Graffiti) is hereby rescinded in its entirety.

SECTION 6. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 7. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 8. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and regularly introduced at a meeting of the City Council of the City of Los Altos on May 27, 2003, and was thereafter, at a regular meeting held on June 10, 2003, passed and adopted by the following vote:

Ayes: Mayor Casto, Mayor Pro Tem Becker, Councilmembers La Poll, Lear, and Moss
Noes: None
Absent: None


Kris Casto, Mayor

Attest: 
Carol Scharz, City Clerk